


**FILED**  
**SAN MATEO COUNTY**

JUL 09 2019

Clerk of the Superior Court  
By   
DEPUTY CLERK

1 James A. Murphy - 062223  
JMurphy@mpbf.com  
2 Joseph S. Leveroni - 304721  
JLeveroni@MPBF.com  
3 MURPHY, PEARSON, BRADLEY & FEENEY  
520 Capitol Mall, Suite 250  
4 Sacramento, CA 95814  
Telephone: (916) 565-0300  
5 Facsimile: (916) 565-1636

6 Attorneys for  
BIRNBAUM & GODKIN, LLP

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
9 **COUNTY OF SAN MATEO**

10  
11 SIX4THREE, LLC, a Delaware limited liability  
company,

12 Plaintiff,

13 v.

14 FACEBOOK, INC., a Delaware corporation;  
15 MARK ZUCKERBERG, an individual;  
CHRISTOPHER COX, an individual; JAVIER  
16 OLIVAN, an individual; SAMUEL LESSIN, an  
individual; MICHAEL VERNAL, an individual;  
17 ILYA SUKHAR, an individual; and DOES 1-50,  
inclusive,

18 Defendants.  
19  
20

Case No.: CIV 533328

Assigned For All Purposes To  
Hon. V. Raymond Swope, Dept. 23

**PARTY, BIRNBAUM & GODKIN, LLP'S  
OBJECTIONS TO FACEBOOK, INC.'S  
FACTUAL CONTENTIONS CONTAINED  
IN ITS OBJECTION TO SIX4THREE'S  
LIMITED-SCOPE COUNSEL'S SECTION  
170.6 CHALLENGE**

Dept.: 23  
Judge: Hon. V. Raymond Swope  
Filing Date: April 10, 2015  
**TRIAL DATE: APRIL 25, 2019**  
**[VACATED]**

21 CIV533328  
22 OBJECT  
Objection  
1925895



1 BIRNBAUM & GODKIN, LLP ("B&G") hereby objects to the inaccurate factual contentions  
2 set forth in Defendant FACEBOOK, INC.'s ("FACEBOOK") Objections to Six4Three's Limited Scope  
3 Counsel's Section 170.6 Challenge. On July 2, 2019, SIX4THREE, LLC's ("SIX4THREE") counsel,  
4 Reno F.R. Fernandez III, filed a peremptory challenge motion pursuant to Code of Civil Procedure §  
5 170.6. On July 5, 2019, FACEBOOK filed an objection to Mr. Fernandez's peremptory challenge motion  
6 which includes numerous factual misstatements and unfounded accusations. Among other things,  
7 FACEBOOK ignores that FACEBOOK created B&G's conflict with its former client SIX4THREE,  
8 knew that it created the conflict, and then fought tooth and nail to dispute that the conflict existed. Not  
9 only does FACEBOOK grossly overstate the previous issues concerning the protective order, it grossly  
10 understates its involvement in the current procedural status of this matter given that it created the conflict  
11 between SIX4THREE and its attorneys. There is no doubt that FACEBOOK created the need for  
12 SIX4THREE to obtain new counsel.

13 FACEBOOK'S scurrilous allegations of wrongful conduct by B&G are particularly problematic  
14 because FACEBOOK knows that B&G is not a party to this case and is no longer counsel for Six4Three.  
15 FACEBOOK has filed no motions or complaints against B&G. Nevertheless, B&G remains bound by  
16 the California and Massachusetts Rules of Professional Conduct and its obligations to its former client,  
17 including relating to confidentiality, and thus has no ability to defend itself from FACEBOOK's false  
18 charges. Accordingly, FACEBOOK's allegations against B&G should be stricken.

19 FACEBOOK makes incorrect and inflammatory statements that B&G intentionally  
20 manufactured a plan with SIX4THREE to delay these proceedings without any factual support. Such  
21 misplaced allegations cannot stand. While FACEBOOK alleges that B&G is not respectful of the orders  
22 in this case, what is astonishing is FACEBOOK's complete lack of respect for the Rules of Professional  
23 Conduct and lack of appreciation of the fact that SIX4THREE is entitled to representation that is not  
24 conflicted. FACEBOOK's false accusations against B&G cannot go unchecked. FACEBOOK is  
25 disingenuous in attempting to control the narrative and making these baseless allegations in a forum  
26 wherein B&G has no redress. B&G denies FACEBOOK's unfounded allegations of B&G's complicity  
27 with the alleged illegal conduct.

1 B&G is not taking any position as to the peremptory challenge motion. It objects to  
2 FACEBOOK's false accusations to preserve the record and protect its professional reputation against  
3 such unprovoked, scurrilous attacks.

4  
5 DATED: July 9, 2019

MURPHY, PEARSON, BRADLEY & FEENEY

6  
7  
8 By Kristin Iversen  
Kristin L. Iversen  
9 Attorneys for Defendant  
BIRNBAUM & GODKIN, LLP

10 KLI.3471501.docx  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

1 **CERTIFICATE OF SERVICE**

2 I, Alice M. Kay, declare:

3 I am a citizen of the United States, am over the age of eighteen years, and am not a party to or  
4 interested in the within entitled cause. My business address is 88 Kearny Street, 10th Floor, San  
5 Francisco, California 94108.

6 On July 9, 2019, I served the following document(s) on the parties in the within action:

7  
8 **PARTY, BIRNBAUM & GODKIN, LLP'S OBJECTIONS TO FACEBOOK, INC.'S**  
9 **FACTUAL CONTENTIONS CONTAINED IN ITS OBJECTION TO SIX4THREE'S**  
10 **LIMITED-SCOPE COUNSEL'S SECTION 170.6 CHALLENGE**

11 X	<b>VIA MAIL:</b> I am familiar with the business practice for collection and processing of mail. The above-described document(s) will be enclosed in a sealed envelope, with first class postage thereon fully prepaid, and deposited with the United States Postal Service at San Francisco, California on this date, addressed as listed below.
13	<b>VIA E-MAIL:</b> I attached the above-described document(s) to an e-mail message, and invoked the send command to transmit the e-mail message to the person(s) at the e-mail address(es) listed below. My email address is AKay@mpbf.com
15	<b>VIA HAND:</b> The above-described document(s) will be placed in a sealed envelope which will be hand-delivered on this same date, addressed as listed below.

17  
18 Sonal N. Mehta  
19 Catherine Y. Kim  
20 Laura E. Miller  
21 Durie Tangri LLP  
22 217 Leidesdorf Street  
San Francisco, CA 94111  
smehta@durietangri.com  
ckim@durietangri.com  
lmiller@durietangri.com

Attorneys For Defendant  
FACEBOOK, INC.

23 Jack Russo  
24 Christopher Sergeant  
25 Computer Law Group, LLP  
26 401 Florence Street  
Palo Alto, CA 94301  
jrusso@computerlaw.com  
csargent@computerlaw.com

Attorneys for Theodore Kramer and Thomas  
Scaramellino

1 Reno F.R. Fernandez III  
Matthew J. Olson  
2 MacDonald Fernandez LLP  
221 Sansome Street, Third Floor  
3 San Francisco, CA 94104  
Reno@MacFern.com  
4 Matt@MacFern.com

Attorney For Plaintiff  
SIX4THREE, LLC

5 Donald P. Sullivan  
Wilson Elser  
6 525 Market Street, 17<sup>th</sup> Floor  
7 San Francisco, CA 94105  
Donald.sullivan@wilsonelser.com

Attorneys for Gross & Klein LLP

8 Stuart G. Gross  
9 Gross & Klein LLP  
The Embarcadero, Pier 9, Suite 100  
10 San Francisco, CA 94111  
sgross@grosskleinlaw.com  
11

12  
13 I declare under penalty of perjury under the laws of the State of California that the foregoing is  
14 a true and correct statement and that this Certificate was executed on July 9, 2019.

15 By

16   
Alice M. Kay